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SECOND DIVISION

[G.R. No. L-45494. August 31, 1978]

BENITO BOLISAY and GENEROSA BUTED BOLISAY, *petitioners, vs.* **HON. LEONARDO S. ALCID, in his capacity as Judge of the Court of First Instance of Ilocos Norte, Branch in Laoag City, and ANGELA BUTED PASCUAL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE; INTESTATE PROCEEDINGS; PROBATE COURT MAY MAKE A *PRIMA FACIE* DETERMINATION OF ISSUE OF OWNERSHIP.** — The mere inclusion in the inventory submitted by the administrator of the estate of a deceased person of a given property does not of itself deprive the probate court of authority to inquire into the propriety of such inclusion in case an heir or a third party claims adverse title thereto. To hold otherwise would render inutile the power of that court to make a *prima facie* determination of the issue of ownership. The correct rule is that the probate court should resolve the issue before it provisionally, as basis for its inclusion in or exclusion from the inventory. It does not even matter that the issue is raised after the approval of the inventory because "apparently, it is not necessary that the inventory and appraisal be approved by the court."

2. **ID.; ID.; ID.; IN INCLUSION OR EXCLUSION OF PROPERTY, PRESUMPTIVE CONCLUSIVENESS OF TITLE GIVEN DUE WEIGHT.** — In the matter of inclusion or exclusion of property, if a property covered by Torrens title is involved, the presumptive conclusiveness of such title should be given due weight, and in the absence of strong compelling evidence to the contrary, the holder thereof should be considered to the contrary, the holder thereof should be considered as the owner of the property in controversy until his title is nullified or modified in an appropriate ordinary action, particularly, when the possession of the property itself is in the persons named in the title.

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3. ID.; ID.; ID.; PROBATE COURT; AUTHORITY EXTENDS ONLY OVER PROPERTIES LISTED IN INVENTORY. — A probate court's order allowing the administratrix to collect rentals from a disputed property listed in the inventory would have no more legal basis after the Supreme Court had held that the property in issue should be excluded from the inventory of the subject estate. The probate court's authority extends only over properties listed in the inventory, without prejudice to any party adversely affected asserting or protecting his right or interests in a separate appropriate remedy.

APPEARANCES OF COUNSEL

Sumulong Law Office for petitioners.
Rafael B. Ruiz for private respondents.

D E C I S I O N

BARREDO, *J.*:

Petition for *certiorari* to annul the order of respondent judge in Special Proceedings No. 4560-II dated July 27, 1976 which in effect ruled that notwithstanding that the subject property is duly titled in the name of petitioners, the administratrix of the intestate estate involved in said proceedings has the right to collect the rentals of said property over the objection of the titled owners just because it is included in the inventory of said estate and there is an ordinary action in the regular court over the ownership thereof and the estate is one of the parties therein.

Petitioner Generosa Buted Bolisay and private respondent-admninistratrix Angela Buted Pascual are sisters, the daughters of the deceased Luciana Abadilla whose intestate estate is being settled. The subject property is a lot situated in the Barrio of San Jacinto, Laoag City, with an area of 538 square meters. It is now covered by Transfer Certificate of Title No. T-12782, of the Register of Deeds of the City of Laoag, in the name of petitioners issued on August 20, 1976. As a matter of fact, they already had the title over it since June 5, 1961, TCT No. (T-7271)-3377. This earlier title was over 549 square meters,

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while the latter is for 538 square meters, the explanation being that, as per Entry No. 6220 made on August 20, 1952 at the back of the title as it originally was in the name of the deceased Luciana Abadilla, she sold a small portion to Filemon Pascua for ₱50.00.

With said lot as security by way of mortgage, petitioners secured from the Government Service Insurance System a loan of ₱30,000 in June, 1962. Allegedly, with the proceeds of said loan plus their own funds, they built a 7-door apartment thereon and the same has been declared in their names for tax purposes since 1970. The mortgage to the GSIS was released upon full payment by them of the loan on June 24, 1974.

On the other hand, in August 1975, private respond Angela Buted and Maria Buted filed an action for the annulment of the Deed of Sale executed by their deceased mother Luciana in favor of petitioners, which deed was precisely the basis of the aforementioned titles in the names of said petitioners. The complaint alleged lack of consideration and disputed that petitioners were the ones who spent for the construction of the 7-door apartment. That case is docketed as Civil Case No. 6135-II of the Court of First Instance of Ilocos Norte.

Pending also before Branch I of the same court is an action of partition, Civil Case No. 2452-I, wherein a compromise agreement was reached excluding the lot in question from the list of partitionable properties.

The foregoing notwithstanding, on May 19, 1973, respondent administratrix filed an inventory of the properties comprising the estate of Luciana and included therein the property here in controversy. Said inventory was approved without opposition on June 1, 1973. And on July 16, 1976, she filed a motion to collect rentals from the 7-door apartment in the accumulated amount of ₱7,310 in the actual possession of one Alfredo Palanca. Without notice to either the petitioners, Alfredo Palanca or the tenants, respondent judge granted the motion on July 27, 1976. On August 11, 1976, petitioners moved for reconsideration of said order. Further, on September 6, 1976, they filed a motion to exclude the said property from the inventory. On December 9, 1976, both motions were denied, the court reasoning out as follows:

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"From the record and the pleadings, the following appears: The administratrix filed on May 19, 1973 an inventory of the properties comprising the estate of the deceased Luciana Abadilla *Vda. de* Buted which inventory was approved by the Court in its Order dated June 1, 1973. Its approval was not opposed. The property now in controversy is listed as Parcel 31 of said inventory. It is a parcel of land containing an area of 538 square meters. This same parcel of land is also one of several parcels subject matters of an amended complaint filed on April 2, 1957 in Civil Case No. 2452-I for partition filed by Domingo Buted, Maria Buted, Enrique Buted, Angela Buted and Generosa Buted against Juan Buted, Narciso Buted and Luciana Abadilla, the determination of which is pending before Branch I of this Court. In the answer of Benito Bolisay to the third party complaint filed by Juan Buted against him in said Civil Case No. 2452-I, Benito Bolisay claims that he bought Parcel 31 from Luciana Abadilla on June 5, 1961. In Civil Case No. 6135-II of this Court which is an action for annulment of the alleged sale of Parcel 31 between Luciana Abadilla and Benito Bolisay said Benito Bolisay and his wife Generosa Buted alleged that as a consequence of said sale, said spouses were issued Transfer Certificate of Title No. 3377. The record further shows that on June 27, 1962, using this property as a collateral, the above-mentioned spouses were able to obtain a loan of ₱30,000.00 from the GSIS which proceeds of loan were used to construct the building now standing on the property.

"In short, Civil Case No. 2452-I is an action for Partition of several properties including Parcel 31 allegedly owned in common by plaintiffs and defendants therein, the compromise agreement approved in said case notwithstanding, while Civil Case No. 6135-II is an action for Annulment of that contract of sale allegedly executed by Luciana Abadilla in favor of spouses Benito Bolisay and Generosa Buted of said Parcel 31.

"In a long line of jurisprudence it has been established that the court in its capacity as a probate court has no jurisdiction to determine with finality the question of ownership of properties included in the inventory of an estate. This is a matter that must be litigated in a separate action.

"In the instant case, the ownership of Parcel 31 with its improvements is an issue not only in Civil Case No. 2452-I for partition but also in Civil Case No. 6135-II for annulment of contract of sale. This Court, therefore, sitting as a probate court, does not have the jurisdiction to determine with finality the question of ownership of the property

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in question because the same might as well be determined in Civil Case No. 2452-I or Civil Case No. 6135-II or in both cases. Nor this Court will attempt to pass on the motion for exclusion provisionally even if it can do so because it is of the opinion that it will only amount to an exercise in futility.

"WHEREFORE, the motion for reconsideration filed by Generosa Buted Bolisay on August 11, 1976 of the order of July 27, 1976 is hereby DENIED. Likewise, the motion of Generosa Buted Bolisay and Benito Bolisay filed on September 6, 1976 to exclude Parcel 31 from the inventory submitted by the administratrix in this case and to order said administratrix to desist from collecting the rentals of the improvements due is also DENIED." (Pages 10-12, Memorandum for Petitioners.)

His Honor's statement of the controlling jurisprudence is correct. Indeed, the illustrative expression of the comprehensive ruling on the matter may be found in *Garcia vs. Garcia,* 67 Phil. 353, which reads thus:

"It is the duty of every administrator, whether special or regular, imposed by Section 668 of the Code of Civil Procedure, to return to the court within three months after his appointment a true inventory of the real estate and all the goods, chattels, rights, and credits of the deceased which come into his possession or knowledge, unless he is residuary legatee and has given the prescribed bond. The court which acquires jurisdiction over the properties of a deceased person through the filing of the corresponding proceedings, has supervision and control over the said properties, and under the said power, it is its inherent duty to see that the inventory submitted by the administrator appointed by it contains all the properties, rights and credits which the law requires the administrator to set out in his inventory. In compliance with this duty the court has also inherent power to determine what properties, rights and credits of the deceased should be included in or excluded from the inventory. Should an heir or person interested in the properties of a deceased person duly call the court's attention to the fact that certain properties, rights or credits have been left out in the inventory, it is likewise the court's duty to hear the observations, with power to determine if such observations should be attended to or not and if the properties referred to therein belong *prima facie* to the intestate, but no such determination is final and ultimate in nature as to the ownership of the said properties (23 C.J., p. 1163, par. 381).

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"The lower court, therefore, had jurisdiction to hear the opposition of the heir Teresa Garcia to the inventory filed by the special administratrix Luisa Garcia, as well as the observations made by the former as to certain properties and credits, and to determine for purposes of the inventory alone if they should be included therein or excluded therefrom. As Teresa Garcia withdrew her opposition after evidence was adduced tending to show whether or not certain properties belonged to the intestate and, hence, whether they should be included in the inventory, alleging that the lower court had no jurisdiction to do so, she cannot be heard to complain that the court suspended the trial of her opposition.

"In view of the foregoing, we are of the opinion and so hold, that a court which takes cognizance of testate or intestate proceedings has power and jurisdiction to determine whether or not the properties included therein or excluded therefrom belong *prima facie* to the deceased, although such a determination is not final or ultimate in nature, and without prejudice to the right of the interested parties, in a proper action, to raise the question bearing on the ownership or existence of the right or credit."

To the same effect was *Santos vs. Antonio*, 70 Phil. 388, where the Court held:

"En cuanto a la exclusión del inventario de ciertas propiedades, si bien es cierto, como regla general que el tribunal, en esas actuaciones, no tiene facultad para decidir cuestiones sobre titulo de propiedad, ya hemos declarado, sin embargo, que puede hacerlo, de un modo provisional, cuando el proposito es solamente para determinar si deben o no excluirse del inventario algunas propiedades en particular."

And the ruling was reiterated in *Baquial vs. Amihan*, 92 Phil. 501, at p. 503.

Rather, it is His Honor's application of the jurisprudential rule that calls for modification. As We see the situation before Us, petitioners are not after a final resolution of their claim of ownership by the probate court. All that they are asking is that a *prima facie* determination be made on that score as a basis for their prayer that the property in dispute be excluded from the inventory, prepared and filed by respondent administratrix. Indeed, We perceive merit in petitioners' contention that in

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effect His Honor's order denying the motion for exclusion is somehow inconsistent, since it is in itself a determination that for the purposes of Special Proceedings No. 4560-II, and accordingly, until the question of ownership between petitioners and private respondent has been finally determined in appropriate ordinary action, the disputed property must be deemed part of the intestate estate of Luciana Abadilla, hence the order to allow the administratrix to collect the rentals due therefrom. Considering that as aforestated the said property is titled under the Torrens System in the names of the petitioners, it does appear strange, in the light of the probate court's own ruling that it has no jurisdiction to pass on the issue of ownership, that the same court deemed the same as part of the estate under administration just because the administratrix, alleges it is still owned by the estate and has in fact listed it in the inventory submitted by her to the court.

It does not matter that respondent-administratrix has evidence purporting to support her claim of ownership, for, on the other hand, petitioners have a Torrens title in their favor, which under the law is endowed with incontestability until after it has been set aside in the manner indicated in the law itself, which, of course, does not include, bringing up the matter as a mere incident in special proceedings for the settlement of the estate of deceased persons. In other words, in Our considered view, the mere inclusion in the inventory submitted by the administrator of the estate of a deceased person of a given property does not of itself deprive the probate court of authority to inquire into the propriety of such inclusion in case an heir or a third party claims adverse title thereto. To hold otherwise would render inutile the power of that court to make a *prima facie* determination of the issue of ownership recognized in the above-quoted precedents. The correct rule is that the probate court should resolve the issue before it provisionally, as basis for its inclusion in or exclusion from the inventory. It does not even matter than the issue is raised after approval of the inventory because "apparently, it is not necessary that the inventory and appraisal be approved by the Court." (Francisco on the Rules of Court Vol. V-B, p. 99, citing *Siy Chong Keng v. Collector of Internal Revenue*, 60 Phil. 494)

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In regard to such incident of inclusion or exclusion, We hold that if a property covered by Torrens title is involved, the presumptive conclusiveness of such title should be given due weight, and in the absence of strong compelling evidence to the contrary, the holder thereof should be considered as the owner of the property in controversy until his title is nullified or modified in an appropriate ordinary action, particularly, when as in the case at bar, possession of the property itself is in the persons named in the title.

As regards the respondent court's order allowing the administratrix Angela Buted Pascual to collect the rentals from the property here in question and ordering Alfredo Palanca to deliver the ₱7,310.00 of rentals in his possession to said administratrix, it is evident that with Our holding above that the property in issue should be excluded from the inventory of the subject estate, said order has no more legal basis. The probate court's authority extends only over properties listed in the inventory, without prejudice to any party adversely affected asserting or protecting his rights or interests in a separate appropriate remedy.

PREMISES CONSIDERED, the assailed orders of respondent judge of July 27, 1976 and December 9, 1976 are hereby completely set aside, for having been issued in grave abuse of discretion, without prejudice to the proper determination of the issue of ownership between the parties herein of the property in dispute in the action filed by respondent-administratrix for the annulment of the Torrens title now in the names of petitioners. Costs against private respondent.

Fernando (Chairman), Antonio, Concepcion Jr., and *Santos, JJ.*, concur.

Aquino, J., concurs. Angela Buted Pascual, as administratrix of the intestate estate of Luciana Abadilla, may file a claim for the rentals in Civil Case No. 6135-II which, apparently, is also pending in the sala of respondent Judge. She is a plaintiff in that case.